

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Charles P. Kocoras	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	01 C 4429	DATE	4/4/2002
CASE TITLE	US ex rel. Enis vs. Schomig		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

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DOCKET ENTRY:

(1)	<input type="checkbox"/>	Filed motion of [use listing in "Motion" box above.]
(2)	<input type="checkbox"/>	Brief in support of motion due _____.
(3)	<input type="checkbox"/>	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	<input type="checkbox"/>	Ruling/Hearing on _____ set for _____ at _____.
(5)	<input checked="" type="checkbox"/>	Status hearing set for 6/27/2002 at 9:45 A.M..
(6)	<input type="checkbox"/>	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	<input type="checkbox"/>	Trial[set for/re-set for] on _____ at _____.
(8)	<input type="checkbox"/>	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	<input type="checkbox"/>	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] <input type="checkbox"/> FRCP4(m) <input type="checkbox"/> General Rule 21 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2).
(10)	<input checked="" type="checkbox"/>	[Other docket entry] Ruling held. ENTER MEMORANDUM OPINION: We grant petitioner's motion (Doc 14-1), and stay any proceedings involving his petition for habeas corpus for 60 days to allow the state court to consider his petition for postconviction relief. Ruling set for April 25, 2002 is stricken as moot.
(11)	<input checked="" type="checkbox"/>	[For further detail see order attached to the original minute order.]

<input type="checkbox"/>	No notices required, advised in open court.		number of notices	Document Number 18
<input type="checkbox"/>	No notices required.		APR 5 2002 date docketed	
<input type="checkbox"/>	Notices mailed by judge's staff.		AWL docketing deputy initials	
<input type="checkbox"/>	Notified counsel by telephone.		date mailed notice	
<input checked="" type="checkbox"/>	Docketing to mail notices.		mailing deputy initials	
<input type="checkbox"/>	Mail AO 450 form.			
<input type="checkbox"/>	Copy to judge/magistrate judge.			
SCT		courtroom deputy's initials Date/time received in central Clerk's Office		

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA ex rel.)
ANTHONY ENIS,)
)
Petitioner,)
)
vs.)
)
JAMES M. SCHOMIG, Warden, Pontiac)
Correctional Center,)
)
Respondent.)

DOCKETED
APR - 5 2002

01 C 4429

MEMORANDUM OPINION

This matter comes before the court on the petitioner's motion to stay habeas proceedings pending resolution of a petition for postconviction relief pending in the Circuit Court of Lake County. For the reasons set forth below, the motion is granted and proceedings will be stayed for 60 days.

BACKGROUND

Petitioner Anthony Enis ("Enis") was convicted of first-degree murder in Lake County, Illinois and was sentenced to death by lethal injection. The Illinois Supreme Court affirmed Enis's conviction and sentence in People v. Enis, 645 N.E.2d 856 (1994). Enis thereafter filed a petition for postconviction relief in June 1995, the denial of which was ultimately upheld in November 2000. People v. Enis, 743 N.E.2d 1 (2000). The state supreme court denied rehearing on January 29, 2001. Enis then filed

a second postconviction petition in Lake County and a petition in this court for a writ of habeas corpus. He now moves to stay proceedings on the federal petition until the state court action is resolved.

DISCUSSION

Under the Anti-Terrorism and Effective Death Penalty Act (“AEDPA”) state prisoners seeking habeas relief must file their petitions no more than one year from the latest of four specified dates. 28 U.S.C. § 2244(d)(1). If a prisoner properly files an application for postconviction or collateral review with a state court, the limitations period is tolled while the state court completes its examination of the petitioner’s claim. The key to the tolling provision is that the application must be properly filed, otherwise the prisoner’s allotted time to file a habeas petition will continue to elapse. See, e.g., Artuz v. Bennett, 121 S.Ct. 361 (2000); Tinker v. Hanks, 255 F.3d 444 (7th Cir. 2001); cf. Smith v. Walls, 276 F.3d 340, (7th Cir. 2002). Many a petitioner has lost their opportunity to seek federal relief while awaiting the outcome of a state petition that is eventually determined to be improperly filed. The most effective way for a prisoner to keep all avenues open is to file a “precautionary federal petition” within the most conservative measure of the one-year period. Brooks v. Walls, 279 F.3d 518, 524-25 (7th Cir. 2002). The district court can then stay the federal petition for the duration of the state action, and the petitioner will not run afoul of AEDPA if he or she eventually

goes to federal court. See, e.g., Freeman v. Page, 208 F.3d 572, 577 (7th Cir. 2000); U.S. ex rel. Erickson v. Schomig, 162 F. Supp. 2d 1020, 1050-51 (N.D. Ill. 2001).

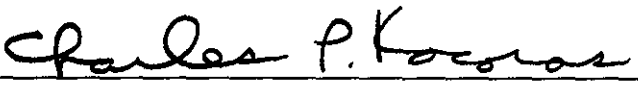
Respondent James Schomig (“Schomig”) takes the position that a stay is inappropriate in this case because Enis has “for all intents and purposes” exhausted all available state remedies and that his pending state petition is “presumptively impermissible.” They argue that it would serve no purpose to wait any longer to address Enis’s petition. Although these characterizations of the situation at hand may ultimately prove to be correct, they implicitly acknowledge the possibility, remote though it may be, that the state court may afford Enis some or all of the relief he requests in his petition. The claims in the state petition mirror some of the bases for relief in the federal petition, and we think it prudent to await, for a reasonable time, the state court’s treatment of these issues.

We note, however, that we are not precluded from reviewing Enis’s petition while the state case is pending; a grant of a stay is discretionary. 28 U.S.C. § 2254(b)(2); U.S. ex rel. Williams v. Gilmore, 104 F. Supp. 2d 931, 931 (N.D. Ill. 2000). In the present circumstances, we think a stay is the most appropriate course of action; it serves the ends of both federalism, in stepping back while the state reviews its own decision, and fairness, in not foreclosing any federal remedy Enis may have while the state action is pending. However, any stay that will stretch on indefinitely undermines the purpose of the AEDPA time limit. See Neal v. Gramley, 99F.3d 841

(7th Cir. 1996). Accordingly, we stay proceedings on Enis's petition for 60 days from the date of this opinion and will revisit the matter at that time.

CONCLUSION

Based on the foregoing analysis, we grant petitioner's motion and stay any proceedings involving his petition for habeas corpus for 60 days to allow the state court to consider his petition for postconviction relief.



Charles P. Kocoras
United States District Judge

Dated: April 4, 2002